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# At the Foot of the Master: What Dickens Got Right About What Lawyers Do Wrong

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# Articles

MICHAEL K. MCCHRYSTAL\*

## At the Foot of the Master: What Charles Dickens Got Right About What Lawyers Do Wrong

He stood behind me, with his long black figure reaching nearly to the ceiling of those low rooms; feeling the pimples on his face as if they were ornaments, and speaking inwardly and evenly as though there were not a human passion or emotion in his nature. . . . So slow, so eager, so bloodless and gaunt, I felt as if Richard were wasting away beneath the eyes of this adviser, and there were something of the Vampire in him.<sup>1</sup>

Now there is a lawyer. Particularly, there is Mr. Vholes, solicitor for Richard Carstone in the monstrous suit in equity known as Jarndyce and Jarndyce, the centerpiece legal matter in Charles Dickens' *Bleak House*. Mr. Vholes is among a handful of lawyer-characters created by Dickens in *Bleak House*, a colorful tale of the havoc that can be wrought by lawyers and the legal system.

This Article revisits the characters and themes of this classic novel about the law and lawyering to consider whether its central criticisms of lawyers inhere in the lawyer role. Does the job of lawyering lead naturally to the vilification of lawyers? Or are lawyers more often criticized for how they do their job, rather than for the job itself?

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\* Professor of Law, Marquette University Law School. B.A., 1972, University of Michigan; J.D., 1975, Marquette University. The author is grateful to the many colleagues, students, and friends who patiently listened to and helpfully commented on the ideas expressed in this Article. Special thanks are due to Phoebe Williams and Alison Barnes for their contributions.

<sup>1</sup> CHARLES DICKENS, *BLEAK HOUSE* 820 (Oxford Illustrated Dickens ed., Oxford Univ. Press 1991) (1853) [hereinafter *BLEAK HOUSE*].

This Article concludes that lawyers have a distinct perspective on truth and fairness, and that this perspective may lead unavoidably to the common condemnation of lawyers. Lawyers tend to think of truth as coming in parts and versions, rather than whole, a perspective that permits forms of deception often rejected as immoral by the public at large. Fairness, for lawyers, too often is measured by process rather than substance, and is measured in bits as well, with each bit requiring time and resources. In the end, a matter handled fairly from a lawyer's point of view may seem a redundant, intrusive, and costly abomination to a layperson.

In addition to the problems of the lawyer perspective on truth and fairness, Dickens' *Bleak House* addresses several important themes that recur in the popular derision of lawyers, including greed, betrayal, and arrogance.<sup>2</sup> This Article suggests that these criticisms do not inhere in the lawyer role in the same way as the truth and fairness issues.

After offering a general description of the story line in *Bleak House*, this Article looks closely at four unsavory characters, three of whom, Mr. Vholes, Mr. Tulkinghorn, and Conversation Kenge, are solicitors, and the fourth, William Guppy, a solicitor's clerk. The Article then discusses the grounds presented in *Bleak House* for a general indictment of lawyers<sup>3</sup> and whether the grounds for that indictment still apply to lawyers today.

## I

### THE STORY OF *BLEAK HOUSE*

*Bleak House* presents two related story lines. The first story line involves the Jarndyce family, who have fallen on hard times because their fortune is tied up in a Will dispute in the Court of Chancery.<sup>4</sup> The surviving patriarch of the family, John Jarndyce,

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<sup>2</sup> These themes find expression in contemporary lawyer jokes.

*Greed*: Question: How many lawyers does it take to screw in a light bulb? Answer: How many can you afford?

*Betrayal*: The reason the bar association is against sexual relations with clients is that it involves double-billing for essentially the same service.

*Arrogance*: You can always tell a lawyer, but you can't tell him much.

<sup>3</sup> The English legal profession is historically comprised of two classes of practitioners, barristers and solicitors. *Bleak House* has three characters who are solicitors but none who is a barrister. The term "lawyers" is used frequently in the novel without suggesting any distinction between barristers and solicitors.

<sup>4</sup> Holdsworth traces the history of the Court of Chancery to the year 1238. Over the centuries, the court developed jurisdiction over certain common law cases and

is portrayed as a wise and good man. John brings into his home, Bleak House, Richard Carstone and Ada Clare, his orphaned young cousins for whom he is appointed guardian. Esther Summerson, a supposed orphan for whom John has anonymously provided, also is brought to Bleak House to be a companion for Ada. Thus, one plot line follows the life of the Jarndyce household, consisting most significantly of John Jarndyce, Richard Carstone, Ada Clare, and Esther Summerson.

John and Esther are the essence of goodness. Their lives are made up of a series of good deeds. There is sadness at Bleak House however. Richard and Ada, faithful lovers who eventually wed, live under a dark cloud. Richard is preoccupied with Jarndyce and Jarndyce, the Chancery case involving the family fortune. Richard's involvement in the case disables him from every other occupation, except loving Ada. His dedication to resolving the case is so consumptive it eventually kills him for reasons that are never physiologically explained.

John and Esther take others' worries upon themselves and do whatever they can to aid persons around them. Though they see much suffering and try with only limited success to relieve it, they are happy in the end. Esther marries a fellow do-gooder, the heroic physician Allan Woodcourt, and John is happy to have his friends and family to dote upon.

The second plot line in *Bleak House* involves Sir Leicester and Lady Dedlock. The Dedlocks are an old and noble family, a pillar of the realm. Lady Dedlock, however, has a secret: before her marriage to Sir Leicester she had an affair and gave birth to a child. The child, who was raised without knowing her parentage, is Esther Summerson of Bleak House. The plot line involving the Dedlocks follows the gradual discovery of Lady Dedlock's

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other miscellaneous cases, but by far its most important jurisdiction was in equity, where considerations of conscience, rather than merely technical rules, could be applied. Equitable jurisdiction extended to the administration of estates of deceased persons, which explains why Jarndyce and Jarndyce, the suit depicted in *Bleak House*, would be in Chancery. Holdsworth recounts that abuses in Chancery were commonplace, leading to sweeping reforms of the court in the first half of the nineteenth century. See generally I W.S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 395-476 (3d ed. 1922).

For discussions of Dickens' novels as legal history, see WILLIAM S. HOLDSWORTH, CHARLES DICKENS AS A LEGAL HISTORIAN (1928); Allen Boyer, *The Antiquarian and the Utilitarian: Charles Dickens vs. James Fitzjames Stephen*, 56 TENN. L. REV. 595 (1989).

secret by Sir Leicester's solicitor, Mr. Tulkinghorn, and a solicitor's clerk, William Guppy.

Lady Dedlock has borne her secret heavily and she is resolved that she would rather sacrifice herself than bring harm to Sir Leicester or dishonor to his name. The secret has been well kept until Tulkinghorn and Guppy start to pry. They independently discover the truth and confront Lady Dedlock, and thereby foment a crisis. When Lady Dedlock learns her secret may be revealed she flees and dies two days later of exposure. Sir Leicester is heartbroken but solely at the loss of his wife and not from the knowledge of her past. He, however, eventually recovers with the help of his faithful servants.

## II

### THE LAWYERS IN *BLEAK HOUSE*

Three solicitors and a solicitor's clerk play significant roles in *Bleak House*. Conversation Kenge is solicitor for John Jarndyce, and William Guppy is a clerk in his office. Mr. Vholes represents John's ward, Richard Carstone, in Jarndyce and Jarndyce, the suit in Chancery concerning the Jarndyce family fortune. Mr. Tulkinghorn is solicitor for Sir Leicester Dedlock.

All of these characters are objects of derision in the novel. Much of the derision is directed toward their personal traits rather than their conduct as lawyers.<sup>5</sup> Their conduct however, is deficient as well although it may not be terribly serious by contemporary standards in the American legal profession. In the end we may question whether our standards are too low or the indictments of these lawyers in *Bleak House* are largely undeserved.

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<sup>5</sup> One cannot tell for certain from *Bleak House* whether unattractive people become lawyers, lawyers become unattractive people, or whether it is coincidental that these four lawyer-characters are unattractive. For example, William Guppy is quite unattractive throughout the novel, although only at the book's end is he "admitted . . . on the roll of attorneys." *BLEAK HOUSE*, *supra* note 1, at 860. Lawyering may impose its price upon practitioners, as is suggested by the receiver in Jarndyce and Jarndyce, who "acquired a goodly sum of money by it, but has acquired too a distrust of his own mother." *Id.* at 5. See generally THOMAS L. SHAFFER & ROBERT S. REDMOUNT, *LAWYERS, LAW STUDENTS AND PEOPLE* (1977) (examines differences in attitudes among prelaw students, law students, and lawyers and explores impact of law school study on those attitudes).

## A. Mr. Tulkinghorn

Mr. Tulkinghorn, solicitor for Sir Leicester Dedlock, is at the pinnacle of his profession. He is the “master of the mysteries of great houses,”<sup>6</sup> and he carries family secrets of the high-born “in every limb of his body, and every crease of his dress.”<sup>7</sup> In Lady Dedlock’s words, “[h]is calling is the acquisition of secrets, and the holding possession of such power as they give him.”<sup>8</sup> Once acquired, he carries these secrets beneath an “expressionless mask”<sup>9</sup> which never permits “a ruffle on the surface of his unfathomable depths.”<sup>10</sup>

Tulkinghorn is clearly a force to be reckoned with. His knowledge, self-control, perseverance, and skill at manipulating people and events are formidable. He is “[a]lways at hand. Haunting every place [and there is] no relief or security from him for a moment.”<sup>11</sup> His powers of observation are keen,<sup>12</sup> yet he yields nothing up himself.<sup>13</sup>

In *Bleak House*, knowledge is power and secrecy is treachery, and Tulkinghorn possesses more knowledge and secrets than anyone. Add this to his coldness, his lack of passion and compassion, and Tulkinghorn becomes a “threatening, murderous, dangerous fellow,”<sup>14</sup> and “a confoundedly bad kind of man.”<sup>15</sup>

The reader sees Tulkinghorn portrayed in two worlds. At Chesney Wold, the Dedlock estate in Lincolnshire, Tulkinghorn is the trusted advisor and intimate of Sir Leicester Dedlock. In London, where the dirty work is done, Tulkinghorn haunts dark

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<sup>6</sup> BLEAK HOUSE, *supra* note 1, at 511.

<sup>7</sup> *Id.* at 163.

<sup>8</sup> *Id.* at 511.

<sup>9</sup> *Id.* at 163.

<sup>10</sup> *Id.* at 309.

<sup>11</sup> *Id.* at 653.

<sup>12</sup> Better, we are told, to “have five thousand pairs of fashionable eyes upon [you], in distrustful vigilance, than [Tulkinghorn’s] two eyes.” *Id.* at 402.

<sup>13</sup> “But he can act a part too—his one unchanging character—and as he holds the door open for this woman, fifty pairs of eyes, each fifty times sharper than Sir Leicester’s pair, should find no flaw in him.” *Id.* at 658.

<sup>14</sup> *Id.* at 388.

<sup>15</sup> *Id.* at 643; see also A. E. Dyson, *Bleak House: Esther Better Not Born?*, in DICKENS BLEAK HOUSE: A CASEBOOK 244, 252 (A. E. Dyson ed., 1970) (1969) [hereinafter BLEAK HOUSE: A CASEBOOK] (“A man of power, infinitely malign and corrupt yet in no direct sense motivated by money, he is the presiding genius of evil in *Bleak House*.”); P.J.M. SCOTT, REALITY AND COMIC CONFIDENCE IN CHARLES DICKENS 69 (1979) (“Certainly Tulkinghorn is pretty firmly placed in his moral aspect; with all the black-rook imagery and the like, he is plainly a bad man.”).

corners and back alleys, gathering information and documents to prove that the eminent Lady Dedlock had an affair and gave birth to a child before marrying Sir Leicester. He moves between these two worlds silently, never long absent from either place.<sup>16</sup>

The crucial question respecting Tulkinghorn is how his two worlds relate. Tulkinghorn succeeds at his task of unearthing the secret of Lady Dedlock's past. His first inkling of the scandal arises from Lady Dedlock's seemingly offhand interest in the penmanship of a law-writer who copied an affidavit. From this innocuous detail, Tulkinghorn pieces together that the law-writer, Captain Hawdon, was Lady Dedlock's lover and the father of the infant whom Lady Dedlock abandoned to her sister. Tulkinghorn builds his case against Lady Dedlock by purchasing incriminating documents when he can, and securing them by threats when he must.<sup>17</sup> While he rejects the use of physical violence to secure evidence,<sup>18</sup> this decision may not so much reflect his moral qualms as his secure knowledge that he can get what he wants lawfully. In the end, Tulkinghorn makes a tight case. He has the goods to confront Lady Dedlock with his discovery, and with it add her lofty person to the stable of unfortunate beings over whom he has extortionate power.

It is interesting to ponder whether Tulkinghorn has fulfilled or betrayed the family's trust in this endeavor. As solicitor for Sir Leicester, it is not surprising that Tulkinghorn would investigate signs of a scandal concerning the family. He undertakes this investigation, however, without Sir Leicester's knowledge or consent. Moreover, his pursuit of evidence attracts the attention of others, who thereby come to learn the secret as well and heighten the threat of its revelation.

In hindsight it is clear that Tulkinghorn's investigation causes

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<sup>16</sup> BLEAK HOUSE, *supra* note 1, at 583:

His manner of coming and going between the two places, is one of impenetrabilities. He walks into Chesney Wold as if it were next door to his chambers, and returns to his chambers as if he had never been out of Lincoln's Inn Fields. He neither changes his dress before the journey, nor talks of it afterwards. He melted out of his turret-room this morning, just as now, in the late twilight, he melts into his own square.

<sup>17</sup> Tulkinghorn purchased information from Mademoiselle Hortense and, probably, Grandfather Smallweed and attempted to do so from George Rouncewell. He finally secured information from George by threatening George and the Bagnets, George's friends, with imprisonment for debt.

<sup>18</sup> BLEAK HOUSE, *supra* note 1, at 381. ("Violence will not do for me.").

only harm. What is less clear is why Tulkinghorn proceeded without Sir Leicester's knowledge and consent, especially once he had credible evidence disclosing Lady Dedlock's secret. While Tulkinghorn professes that Sir Leicester and the family name have been his sole consideration,<sup>19</sup> there is little reason to trust him in this or any other matter. More likely, Tulkinghorn enjoyed the power his discovery gave him,<sup>20</sup> especially power over the high and mighty Lady Dedlock.<sup>21</sup> When he confronts Lady Dedlock with his knowledge of her secret, he does so in a manner that conveys a conquest.<sup>22</sup>

The lawyer-client relation is inverted by Tulkinghorn's actions. His knowledge of family secrets gives him power over his client, by keeping him in the dark, and over his client's wife, by threatening disclosure. The agent has become the master of his client's fate, and Tulkinghorn threatens to use his new power ruthlessly by exposing Lady Dedlock's secret to the whole house, guests and servants included, if she attempts to flee.<sup>23</sup> Tulkinghorn has taken matters into his own hands; it is he, not the client, who is in charge.

Through all this, Tulkinghorn insists that his client's interests are his sole consideration. His skill is so great that, even with all the facts disclosed, he perpetuates the myth of faithful service. In his confrontation with Lady Dedlock, who considers him an

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<sup>19</sup> *Id.* at 579.

<sup>20</sup> *Id.* at 402 ("absorbed in love of power"); *id.* at 511 ("His calling is the acquisition of secrets, and the holding possession of such power as they give him, with no sharer or opponent in it."); see also Eugene F. Quirk, *Tulkinghorn's Buried Life: A Study of Character in Bleak House*, 72 J. ENG. & GERMANIC PHILOLOGY 526 (1973) (suggesting that Tulkinghorn's motivation, in addition to love of power, included a hatred of women and resentment of the fashionable world). But see Joseph I. Fradin, *Will and Society in Bleak House*, in CRITICAL ESSAYS ON CHARLES DICKENS'S BLEAK HOUSE 40 (Elliot L. Gilbert ed., 1989) [hereinafter CRITICAL ESSAYS ON BLEAK HOUSE] (noting that Tulkinghorn is insufficiently motivated as a character); Edgar Johnson, *The Anatomy of Society*, in BLEAK HOUSE: A CASEBOOK, *supra* note 15, at 135 (same).

<sup>21</sup> BLEAK HOUSE, *supra* note 1, at 402. The view that Tulkinghorn's motivations are inadequately suggested was expressed even in the earliest criticism of *Bleak House*. See, e.g., Book Review, SPECTATOR (Sept. 24, 1853), in BLEAK HOUSE: A CASEBOOK, *supra* note 15, at 55, 57 ("his motives and character are quite incomprehensible").

<sup>22</sup> BLEAK HOUSE, *supra* note 1, at 576 ("the woman under your foot"); *id.* at 578 ("He has conquered her.").

<sup>23</sup> *Id.* at 577-78 ("Lady Dedlock, have the goodness to stop and hear me, or before you reach the staircase I shall ring the alarm-bell and raise the house. And then I must speak out, before every guest and servant, every man and woman, in it.").



enemy and "has often, often, often, wished him dead,"<sup>24</sup> Tulkinghorn elicits her admission that he has been faithful to Sir Leicester.<sup>25</sup> Sir Leicester pays him tribute as faithful, zealous, and devoted<sup>26</sup> and "always correct and exact."<sup>27</sup>

The myth of faithful service to Sir Leicester, however, does not hold up. Tulkinghorn could have taken his suspicions to Sir Leicester. Sir Leicester could then have determined whether and how to proceed. While Sir Leicester might have been upset at even the hint of scandal, any paternalistic reason for secrecy soon disappeared. Tulkinghorn might reasonably protect Sir Leicester from knowing an unfounded allegation, but, as Tulkinghorn's investigation progressed and the facts became more certain, he could no longer justify his paternalistic secrecy. The stakes were simply too high to justify Tulkinghorn's hiding his knowledge from his client.<sup>28</sup> Tulkinghorn betrayed his client's trust, and brought others to ruin as well.

In addition, Tulkinghorn could have taken his suspicions to Lady Dedlock at the outset. She was the best source of information and the person most invested in its confidentiality. While Lady Dedlock may have been uncooperative because of her distrust of Tulkinghorn, there would be no harm in Tulkinghorn asking her for the facts. Instead of talking to Lady Dedlock, however, Tulkinghorn built a case against her through others. This strategy brought on Lady Dedlock's downfall and resulted in a crushing loss to Sir Leicester.

Where Tulkinghorn stalked, death often followed. Driven from her home and family by Tulkinghorn's discovery, Lady Dedlock dies at the gates of the pauper's burial ground that contains the remains of Captain Hawdon, her secret lover, whom Tulkinghorn also stalked. Mr. Krook, who possessed papers Tulkinghorn desired and eventually secured, dies from spontaneous combustion, or at least so the Inquest finds, expert testimony to the contrary notwithstanding.<sup>29</sup> Jo, the derelict youth who

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<sup>24</sup> *Id.* at 758.

<sup>25</sup> *Id.* at 581 ("I can attest your fidelity, sir.").

<sup>26</sup> *Id.* at 717.

<sup>27</sup> *Id.* at 393.

<sup>28</sup> See generally David Luban, *Paternalism and the Legal Profession*, 1981 WIS. L. REV. 454.

<sup>29</sup> See Peter Denman, *Krook's Death and Dickens's Authorities*, 82 DICKENSIAN 131 (1986) (discussing the debate following publication of the novel as to whether Krook's death by spontaneous combustion was a scientific possibility and Dickens' half-hearted assertion that it was).

supplies information to Tulkinghorn, also dies, and Mademoiselle Hortense, the Tulkinghorn informant who eventually murders him, is likely headed to the gallows.

While none of these deaths was caused directly by Tulkinghorn's hand, his menacing presence hovers near them all. A tight case cannot be made against Tulkinghorn for these deaths, the way that Tulkinghorn makes a tight case against Lady Dedlock and others,<sup>30</sup> but his malevolent prying is still somehow to blame. He picks at wounds that start to hemorrhage. He is a bulwark of the Court of Chancery, which brings misery to many.

Tulkinghorn's evil also derives from the pack of rascallions with whom he consorts in his investigation of Lady Dedlock. This pack includes: Mrs. Snagsby, whose suspicious and conspiratorial bent is a nightmare to her husband; Mrs. Chadband, the cold and heartless servant in Esther Summerson's childhood home, now married to a pompous preacher; and Grandfather Smallweed, a dissembling loan-shark. Prior to his death, Tulkinghorn controlled these dangerous characters. Upon his death, these confederates demand money from the Dedlocks to keep Lady Dedlock's secret. Inspector Bucket puts the case nicely:

Mr. Tulkinghorn, deceased, he held all these horses in his hand, and could have drove 'em his own way, I haven't a doubt; but he was fetched off the box head-foremost, and now they have got their legs over the traces, and are all dragging and pulling their own ways. So it is, and such is life. The cat's away, and the mice they play; the frost breaks up, and the water runs.<sup>31</sup>

Tulkinghorn enables these predators to flex their muscles; he creates the carrion on which they feed. To use Dickens' metaphor: "What was his death but the key-stone of a gloomy arch removed, and now the arch begins to fall in a thousand fragments, each crushing and mangling piecemeal!"<sup>32</sup>

Tulkinghorn's worst characteristics are largely personal: a heart of stone and love of power. Anyone may possess these qualities, but in the hands of a lawyer, they are a special menace. Lawyers gain access to confidential information both directly and indirectly. For example, Lady Dedlock unintentionally gave

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<sup>30</sup> George Rouncewell is another character trapped in a tight case made by Tulkinghorn. See discussion *supra* note 17.

<sup>31</sup> BLEAK HOUSE, *supra* note 1, at 736.

<sup>32</sup> *Id.* at 758-59.

Tulkinghorn the first inkling of her secret when Tulkinghorn is reporting to Sir Leicester at Chesney Wold on the status of a wholly-unrelated legal matter. Thus, the lawyer's privileged access to information about the client is not always subject to the client's detailed control. Once secured, the confidential information can give a lawyer great power over the client and others. This is why Tulkinghorn's profession as a lawyer is central to the evil that he does, and why the evil in Tulkinghorn can make us fear all lawyers.<sup>33</sup>

Tulkinghorn is a principal villain in *Bleak House*, but whether his conduct violates contemporary American ethical standards for the legal profession is far less certain. Tulkinghorn arguably

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<sup>33</sup> Questions of autonomy and who has power over whom are central to the contemporary scholarly literature on the lawyer ethos. There is significant disagreement respecting these questions. One position asserts that the lawyer's principal function is to maximize client autonomy within the bounds of the law. Professor Monroe Freedman is the leading proponent of this view:

Accordingly, the attorney acts both professionally and morally in assisting clients to maximize their autonomy, that is, by counseling clients candidly and fully regarding the clients' legal rights and moral responsibilities as the lawyer perceives them, and by assisting clients to carry out their lawful decisions. Further, the attorney acts unprofessionally and immorally by depriving clients of their autonomy, that is, by denying them information regarding their legal rights, by otherwise preempting their moral decisions, or by depriving them of the ability to carry out their lawful decisions.

MONROE H. FREEDMAN, *UNDERSTANDING LAWYER'S ETHICS* 57 (1990).

A variation on this theme, sometimes called "client-centered practice," emphasizes that lawyers tend to dominate their clients but should, instead, work to enable their clients to exercise the right to choose what to do in the representation. Professor Stephen Ellmann has expressed this view in the following terms:

Armed with great influence over their clients, yet constrained by significant systemic and economic pressures—despite the image of professional autonomy—lawyers may never listen to their clients well enough to understand their actual needs and concerns. Grasping neither the true nature of their clients' problems, nor the contours of the solutions that would best meet their clients' wishes, lawyers may wield a power that benefits no one so much as themselves.

Stephen Ellmann, *Lawyers and Clients*, 34 *UCLA L. REV.* 717, 719-20 (1987).

On the other hand, some scholars assert that lawyers should "do justice" in representing clients, even if this sometimes means overriding the client's lawful desires. For example, Professor William H. Simon has written:

[T]he discretionary approach does not increase lawyer power because any increase in the lawyer's capacity to frustrate client goals is exactly balanced by a reduction in the lawyer's capacity to frustrate goals of third parties and the public. Lawyers serve client goals by using power against others. The discretionary approach puts the lawyer in opposition to clients by reducing her power to injure others for the sake of the client.

William H. Simon, *Ethical Discretion in Lawyering*, 101 *HARV. L. REV.* 1083, 1127 (1988).

exceeded his authority and failed to communicate with his client respecting his investigation of Lady Dedlock's past, in violation of current norms.<sup>34</sup> Setting aside the evidence of Tulkinghorn's bad character,<sup>35</sup> however, a plausible defense may be asserted. Tulkinghorn could plausibly argue that he had implied authority to undertake the investigation given the broad range of responsibilities Sir Leicester entrusted to him.<sup>36</sup> Moreover, Tulkinghorn's express reason for not informing Sir Leicester was concern that the knowledge would incapacitate or even kill his client.<sup>37</sup> This concern is well founded: immediately after being informed of Lady Dedlock's secret, Sir Leicester becomes seriously ill, with symptoms resembling a stroke. Under current standards, information may be withheld from a client for some time if "the client would be likely to react imprudently to an immediate communication."<sup>38</sup> Thus, a contemporary American discipline proceeding might well disagree with the condemnation of Tulkinghorn's conduct expressed in *Bleak House*.<sup>39</sup>

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<sup>34</sup> MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(a) (as amended through August 1992) provides in part: "A lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued."

MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.4 (as amended through August 1992) provides: (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

<sup>35</sup> FED. R. EVID. 404 (character evidence is not generally admissible for the purpose of proving that a person acted in conformity with her character on a particular occasion).

<sup>36</sup> See HAROLD GILL REUSCHLEIN & WILLIAM A. GREGORY, HANDBOOK ON THE LAW OF AGENCY AND PARTNERSHIP 37-38 (1979), which states:

The conferral of authority to do a particular act or occupy a particular position must be taken as bestowing authority to do all the things normally incident to performing the act or the occupancy of the particular status. The term "incidental authority" is convenient and useful to describe the inescapable proposition that it is not necessary, indeed may be impossible, to spell out every detail in granting express authority.

<sup>37</sup> BLEAK HOUSE, *supra* note 1, at 579 ("This is to be hushed up, if it can be. How can it be, if Sir Leicester is driven out of his wits, or laid upon a death-bed?").

<sup>38</sup> MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.4 cmt. (as amended through August 1992).

<sup>39</sup> When Tulkinghorn is murdered by Mademoiselle Hortense, he has in effect been condemned to death. See also ROSS H. DABNEY, LOVE AND PROPERTY IN THE NOVELS OF DICKENS 83 (1967) ("[I]t is difficult, however, to accept such a solid, discreet and self-respecting family lawyer as deliberately and spitefully working against his client's interests."); Book Review, PUTNAM'S MAGAZINE, in BLEAK HOUSE: A CASEBOOK, *supra* note 15, at 75, 78-79 (Tulkinghorn "seems to be always on the point of doing something tragical, but never does").

Under present standards, lawyers possess substantial legal authority to make decisions affecting their clients' interests, particularly under the rubric of "tactical" decision-making. Sound reasons support these standards, especially concerns about cost control and minimizing delays. But these efficiencies come at a price: they make clients more vulnerable. Moreover, these standards may be seen as arrogant. They presuppose that as to some decisions, lawyers know better than their clients what is best for the clients.

Lawyer-bashing often emerges from differences in perspective between lawyers and some segment of the public. These differences may be so large that even a character like Tulkinghorn, so seemingly villainous in the novel, seems not so bad when measured by our standards. As lawyers, we should be alert to these differences in perspective and question whether we are misunderstood or whether our standards are somehow to blame.

### B. Mr. Vholes

Like Mr. Tulkinghorn, Mr. Vholes lacks humanity and looks the part.<sup>40</sup> Vholes, who is Richard Carstone's solicitor, dresses in black, is black gloved, and buttoned to the chin. His digestive problems cause him to eat little, so that in his dark clothes he resembles a "long thin shadow"<sup>41</sup> and his gloves, even when worn, "scarcely seemed to have any hand in it."<sup>42</sup> Above this long thin shadow covered in black, Vholes's face is yellow and covered with red pimples, which Vholes secretly picks at with his black glove.<sup>43</sup>

Both in physical appearance and manner, Vholes is the opposite of the saintly John Jarndyce:

[T]he one so open, and the other so close; the one so broad and upright, and the other so narrow and stooping; the one giving out what he had to say in such a rich ringing voice, and the other keeping it in in such a cold-blooded, gasping, fish-like manner . . . .<sup>44</sup>

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<sup>40</sup> A "vole" is a type of rodent that resembles a rat. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1436 (1979). See Johnson, *supra* note 20, at 144 ("Mr. Vholes, skinning his tight black gloves off his hands as if he were flaying a victim, is constantly described, as are the other lawyers, in metaphors drawn from beasts of prey.").

<sup>41</sup> BLEAK HOUSE, *supra* note 1, at 614.

<sup>42</sup> *Id.* at 617.

<sup>43</sup> *Id.* at 615.

<sup>44</sup> *Id.* at 614.

Vholes is repulsive without speaking a word. He is condemned by appearance and manner, irrespective of what he says and does.

Vholes attracts Richard Carstone as a client by paying a mutual acquaintance for an introduction. Once lured into the representation, Richard expends all of his and his wife's assets on Vholes' pursuit of an impossible goal: a favorable resolution of the Jarndyce and Jarndyce lawsuit. Richard expends all of his hope and spirit as well. In the end, Richard dies because the suit has drained him of life.

The lawyer-client relationship between Richard and Vholes is like that of a drug addict and his supplier. Richard was born into Jarndyce and Jarndyce and believed his life must be unsettled until the case was resolved. Toward that end, he devoted his entire life to the resolution of the case.

Vholes encourages Richard in his addictive pursuit, while denying that he does so. Vholes tells Richard that the suit is moving, that progress is being made, that Vholes looks forward to the day when he can congratulate Richard on his "accession to fortune."<sup>45</sup> At the same time, Vholes repeatedly asserts that he never gives hope.<sup>46</sup> The effect, though, is to prod Richard on, to rekindle his hopes, and to feed his consumptive addiction to the case.

Vholes' duplicity is evident elsewhere as well. Vholes tells Richard: "I never disparage, sir. I never disparage."<sup>47</sup> But it is Vholes who sows the seed of distrust in Richard against John Jarndyce by asserting that John's interests in the lawsuit conflict with Richard's, and that John has controlled the lawsuit to Richard's detriment. Vholes' duplicity is nicely captured in his statement to Esther Summerson: "I merely come down here under the seal of confidence . . . in order that everything may be openly carried on . . . ."<sup>48</sup>

His denials notwithstanding, Vholes is in it for the money, not the welfare of his client. He is "always looking at [his] client, as if he were making a lingering meal of him with his eyes as well as with his professional appetite."<sup>49</sup> Vholes entreats John Jarndyce

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<sup>45</sup> *Id.* at 554.

<sup>46</sup> *Id.* at 551.

<sup>47</sup> *Id.* at 552.

<sup>48</sup> *Id.* at 616.

<sup>49</sup> *Id.* at 550; see also Dan Fredricks, *The Overlooked but Omnivorous Vholes: The Rhetoric of Consumption in Bleak House*, 84 DICKENSIAN 172 (1988) (arguing

and Esther Summerson to help finance Richard and, in turn, his own representation. He accosts Richard's friend, Allan Woodcourt, for money as well. In each instance, Vholes goes behind Richard's back, knowing that Richard would object to these efforts.

Vholes seems the embodiment of the Jarndyce and Jarndyce lawsuit. He is avaricious and, with implied promises of a swift and just result, sucks his client into the quicksand of the lawsuit. Vholes profits, while his client loses everything; his family, his assets, his life. Like Mr. Tulkinghorn's client, Mr. Vholes' client is undone at his lawyer's hand.

The lesson that Vholes teaches lawyers may be even more disquieting, however, than the lesson we learn from Tulkinghorn. Tulkinghorn offers a story about power and betrayal; a lawyer can heed its lessons of humility and fidelity while still practicing law. On the other hand, Vholes teaches that lawyers act wrongly when they encourage clients to use their legal services to seek justice in the legal system, or at least in the Court of Chancery. We are told that the only honorable way to practice in the Court of Chancery is to tell clients, "[s]uffer any wrong that can be done you, rather than come here!"<sup>50</sup> To practice honorably in the Court of Chancery, it seems, is not to practice at all.

Vholes commits some misdemeanors. He pays to be introduced to Richard, in order to attract him as a client. He also discusses Richard's personal finances with others, without Richard's knowledge or consent. But neither of these is his most serious transgression.

The condemnation of Vholes, aside from his repulsive personality, is based on the mere fact of his representation of Richard in Jarndyce and Jarndyce, unrelated to how well he performs in that role. To Richard, Vholes is the "most reliable fellow in the world . . . ."<sup>51</sup> "[He is] a good fellow, a safe fellow, a man who did what he pretended to do . . . ."<sup>52</sup> But no good can come to Richard from Jarndyce and Jarndyce, irrespective of the legal merits of Richard's position. Vholes is despicable for encouraging Rich-

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that Vholes best epitomizes the "ravenous and insatiable maw" that is the legal profession in *Bleak House*).

<sup>50</sup> BLEAK HOUSE, *supra* note 1, at 3.

<sup>51</sup> *Id.* at 551.

<sup>52</sup> *Id.* at 822 (though doubt is cast on whether Richard means this).

ard's trust in Chancery, and he cannot escape this judgment no matter how well he performs professionally.

In a curious way, this same aversion to litigation surfaces in the *Lawyer's Creed of Professionalism* promulgated by the American Bar Association, in which lawyers are encouraged to counsel their clients "with respect to mediation, arbitration and other alternative methods of resolving disputes."<sup>53</sup> The current popularity of dispute resolution methods as alternatives to litigation in the court system signals a failure of the courts to be prompt and predictable.

Of course, Vholes violates no contemporary ethical norms by his mere representation of Richard in Jarndyce and Jarndyce. From all appearances, Richard's interests in the case were legally significant and his claims had legal merit. Moreover, it seems unlikely that the dispute could be resolved in any forum other than the Court of Chancery. Vholes is seemingly faulted for not advising Richard to abandon all hopes of vindicating his legal rights in the case. This is the advice that John, Esther, and Ada effectively give Richard, and that Richard clearly rejects. Richard desperately seeks the vindication of his legal rights. Where Tulkinghorn is criticized for his presumptuous paternalism in acting without Sir Leicester's knowledge and consent, Vholes is criticized for following Richard's instructions. Paternalism toward clients is apparently not always wrong.

Once again, a legal villain in *Bleak House* is acquitted under contemporary ethical standards of the major offense upon which his villainy is based. In following his client's instructions and pursuing a meritorious claim in the proper tribunal, Vholes was doing precisely what ethics standards direct him to do. It seems unlikely, however, that contemporary lay readers of *Bleak House* would be equally forgiving of Vholes.

One final point about Vholes. Vholes sings the song of the hired gun, with this refrain: "[W]hen a client of mine laid down a principle which was not of an immoral (that is to say, unlawful) nature, it devolved upon me to carry it out."<sup>54</sup> Vholes does his client's bidding, irrespective of the client's deeper interests. His

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<sup>53</sup> LAWYER'S CREED OF PROFESSIONALISM § A.3 (1988), available in <<http://www.abanet.org/tips/creed.html>>.

<sup>54</sup> BLEAK HOUSE, *supra* note 1, at 821; see also *id.* at 534 ("[W]hen a client lays down his own principle, and it is not immoral, it devolves upon me to carry it out.").



moral code is the law, and the law, we are elsewhere told,<sup>55</sup> is designed not to vindicate what is right but to provide employment for Vholes. Thus, Vholes lives by a tidy creed: his moral code, his clients' legal interests and desires, and his economic interests are one. This may be the most damning indictment of all, and it is an indictment that may also apply to some contemporary lawyers.<sup>56</sup>

### C. *William Guppy*

William Guppy begins the novel as a clerk in Conversation Kenge's law office and becomes a full-grown lawyer-fish by the novel's end. He proves that avarice and duplicity may accompany one into the legal profession, rather than be instilled on the job. Guppy's conduct has two related facets. First, he is smitten, then unsmitten, then smitten again with Esther Summerson. Second, he is on the track of Lady Dedlock's secret, taking a parallel course to Tulkinghorn. Guppy's suspicion about Lady Dedlock's relation to Esther arises when he notes the strong family resemblance. His on-again, off-again affection for Esther seems to arise at the same time.

Guppy is attracted to Esther, presumably, because she is beautiful and well-placed. Guppy's proposal of marriage to Esther is unequivocally rejected, yet he persists in making himself an abhorrent pest, following Esther on her frequent visits to the theater and haunting a lamppost opposite her bedroom window at night. When Esther suffers a disfiguring disease, Guppy makes a formal point of retracting his already-rejected proposal, even arranging for a witness to observe his retraction and Esther's acknowledgement of it. Guppy later revives his proposal, apparently because he believes that Esther will inherit some of the Jarndyce estate, only to have it rejected once again.

Were Guppy a less ludicrous character, he might evoke the same fear and loathing as Tulkinghorn. Compared to

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<sup>55</sup> See *infra* notes 72-73 and accompanying text.

<sup>56</sup> The coalescence of these values and interests in a significant segment of the bar seems partially responsible for the organized bar's active "professionalism" campaign, which attempts to reduce the extent of commercialism and "hardball" lawyering in the profession. See *Report of the Commission on Professionalism to the Bd. of Governors and the House of Delegates for the American Bar Association*, 112 F.R.D. 243 (1986). See generally DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988) (criticizing a lawyer ethos centered too heavily on the assertion and vindication of the client's arguable rights under the law).

Tulkinghorn, however, he is a rank amateur. He has not learned how to amass power from the secrets he uncovers, and he betrays himself too freely, compared with Tulkinghorn's steadfast reserve.

The contrast between Tulkinghorn and Guppy is most starkly displayed with respect to their pursuit of Lady Dedlock's secret. Guppy and Tulkinghorn follow the same course, uncovering the secret of Lady Dedlock's premarital affair and out-of-wedlock child. Their investigations are neck-and-neck, though Tulkinghorn crosses the finish line first when he secures Lady Dedlock's love letters to her paramour, Captain Hawdon. Both confront Lady Dedlock: Guppy with his suspicions, a few facts, and his investigative plan; Tulkinghorn with a complete and successful investigation. Guppy scares Lady Dedlock; Tulkinghorn overpowers her.

Guppy is a conspirator without a clear purpose. The reader is told that "he in the most ingenious manner takes infinite pains to counterplot, when there is no plot."<sup>57</sup> He seems driven in his quest for Lady Dedlock's secret as a way of winning Esther's heart, but in that endeavor he will never succeed. Indeed, Esther would likely be put off further by his prying into such confidential affairs.

Guppy is a Tulkinghorn in the making. He gathers secrets for future use, but he is unskilled in the gathering and the use. He is duplicitous to no effect; people see right through him. The reader is left to wonder whether Guppy will hone his nefarious skills through experience in law practice, but there is no doubt that he will apply himself to the task.

Guppy provides a sleazy form of comic relief in the novel. He adds little to an understanding of what is wrong with lawyers, except for some cumulative evidence about duplicity and greed. In a way, Guppy is welcome news to those who hate lawyers. He demonstrates that not all lawyers are as skilled as Tulkinghorn and Vholes in achieving their evil ends.

#### D. Conversation Kenge

Conversation Kenge performs three important functions as John Jarndyce's solicitor: he represents John in Jarndyce and Jarndyce, he attends to certain matters affecting John's wards,

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<sup>57</sup> BLEAK HOUSE, *supra* note 1, at 272.

and he assists in situating John's ward, Richard, in his career. Kenge's name and role appear frequently in the novel, but we see little of the character himself. Kenge's conduct and person are not depicted with particularity.

Of all the solicitors in the novel, Kenge escapes least tarred. None of his actions are criticized directly by another character or by the narrator, though some criticism is implied. As his name suggests, Conversation Kenge is praised for his eloquence,<sup>58</sup> but grandiloquence may be more descriptive of his speech.<sup>59</sup>

Kenge's writing, however, does not suffer from the same flaw. When Esther Summerson, as a child, writes periodically to Kenge to express her happiness and gratefulness at her placement at the Greenleaf boarding school, Kenge routinely replies by formally acknowledging receipt of her letter and saying, "[w]e note the contents thereof, which shall be duly communicated to our client."<sup>60</sup>

This same professional coldness is evident when Kenge advises Esther, for the first time, that her recently deceased godmother was in fact her aunt and, in the same conversation, chides her for being unfamiliar with the Chancery suit of Jarndyce and Jarndyce. The coldness surfaces again when Kenge advises Esther, by a short and formal letter some years later, that she is to leave the home she has known for the past six years and live in Bleak House.

A second basis for criticism arises with respect to Kenge's role in establishing Richard in a career. Richard's first stop, as apprentice to a physician, is arranged by Kenge with Mr. Bayham Badger, Kenge's cousin. This self-dealing in the family might be overlooked if Kenge had not presumed John's willingness to "pay a premium"<sup>61</sup> for establishing Richard in the apprenticeship. Richard's second professional stop is as a clerk in Kenge's own law office. No conflict of interest issue is raised, and no criticism is suggested in the novel. Everyone naturally assumes that if Richard is to study law it will be with Kenge, and John Jarndyce is the first to suggest the arrangement. Still, Kenge has multiple and potentially conflicting roles in the matter: as solicitor for

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<sup>58</sup> For example, by Miss Donny. *Id.* at 25.

<sup>59</sup> Here is a sampling: "Now, if I avow, that I represent, in Jarndyce and Jarndyce, and otherwise, a highly humane, but at the same time singular man, shall I compromise myself by any stretch of my professional caution?" *Id.* at 21.

<sup>60</sup> *Id.* at 26.

<sup>61</sup> *Id.* at 170.

both John Jarndyce and Richard,<sup>62</sup> as the solicitor to whom Richard is apprenticed, and as the person John trusted to make apprenticeship arrangements.

Considering the failings of the other solicitors in *Bleak House*, however, these criticisms of Conversation Kenge are relatively minor. Moreover, Kenge is trusted by John Jarndyce, the finest and wisest of clients, to help provide for his wards, even performing tasks for which a solicitor is not required. Kenge discharges these responsibilities to John's apparent satisfaction. At the same time, Kenge is pompous, cold, and self-dealing. Although Kenge is competent and useful, his flaws sully him. He escapes a stinging indictment, but he does not emerge unscathed.

### III

#### THE GENERAL INDICTMENT OF LAWYERS

Kenge, Tulkinghorn, Vholes, and Guppy make for a dreary portrait of the profession. The indictment of lawyers in *Bleak House*, however, extends beyond these individuals. The novel takes shots at lawyers generally, and some of these shots are uncomfortably close to the target even now. Two general indictments of lawyers emerge most clearly: lawyers are responsible for the justice system gone awry and lawyers are duplicitous.

##### A. *Lawyers' Responsibility for Justice Gone Awry*

In *Bleak House*, the Jarndyce family is riven by the curse of having the family fortune tied up in the Court of Chancery, ostensibly because of a dispute about a Will and the trusts it created. The inexcusable duration of the Jarndyce and Jarndyce case seems more attributed, however, to the unnecessary complexity of the proceedings and the greed of the lawyers involved than to the difficulty of the legal and factual questions presented.

The mind-numbing dreariness of the Court of Chancery and the court's use of process to obscure the merits of matters before it form central themes throughout *Bleak House*. The novel opens with a depiction of London enshrouded in fog, and "at the very heart of the fog," the reader is told "sits the Lord High Chancellor in his High Court of Chancery."<sup>63</sup> Fog and mud, and

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<sup>62</sup> Mr. Vholes, Richard's lawyer in Jarndyce and Jarndyce later in the novel, reminds Richard that when they first met, Vholes could offer Richard no advice because his "interests were intrusted to" Kenge. *Id.* at 553.

<sup>63</sup> *Id.* at 2.

muck and mire describe both London in November and the Court of Chancery. These are places one would not wish to be:

This is the Court of Chancery; which has its decaying houses and its blighted lands in every shire; which has its worn-out lunatic in every madhouse, and its dead in every churchyard; which has its ruined suitor, with his slipshod heels and threadbare dress, borrowing and begging through the round of every man's acquaintance; which gives to monied might, the means abundantly of wearying out the right; which so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart; that there is not an honourable man among its practitioners who would not give—who does not often give—the warning, 'Suffer any wrong that can be done you, rather than come here!'<sup>64</sup>

To seek justice in the Court of Chancery leads to an ugly fate. Another Jarndyce, old Tom, sought justice there and finally "in despair blew his brains out at a coffee-house in Chancery Lane."<sup>65</sup> Richard Carstone's slow and inexorable demise, depicted hundreds of pages in the novel, was just as certainly the product of his involvement with that court, though the immediate cause of his death is unclear. Other suitors in Chancery, such as Miss Flite and her family, and Mr. Gridley, likewise become lost souls by allowing a matter in Chancery to become central to their lives.

The evil lurking within, and exuded by, the Court of Chancery no doubt forms part of the indictment of the lawyers who practice before it. The suit of Jarndyce and Jarndyce is a particular in the indictment. Jarndyce and Jarndyce dragged on in Chancery for generations. The case became so legendary, due to the stakes and number of parties (and lawyers) involved, and the extent to which it was mired in the intractable process of the court, that it brought laughter from the gallery when at last it was dismissed.<sup>66</sup> The reader is told, "[i]t has been death to many, but it is a joke in the profession."<sup>67</sup>

Jarndyce and Jarndyce, of course, was not merely a joke in the profession; it was a cash cow. In the end, the suit concludes not because the merits are resolved, but because "the whole estate is found to have been absorbed in costs."<sup>68</sup> The lawyers who are

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<sup>64</sup> *Id.* at 2-3.

<sup>65</sup> *Id.* at 4.

<sup>66</sup> *Id.* at 865.

<sup>67</sup> *Id.* at 4.

<sup>68</sup> *Id.* at 867.

beneficiaries of this obscene institution must share some of the blame, either because they grow rich with blood money or because their form of practice helps to make the institution what it is.

Mr. Gridley, the disappointed suitor in Chancery from Shropshire, asserts the blame. His dispute about something less than three hundred pounds has consumed his estate, which was worth many times that sum. When he rails against the injustice done him and threatens those who are responsible, he is told that the system is to blame, and not the individuals who profit at his loss. To this he responds: "I will accuse the individual workers of that system . . . , face to face, before the great eternal bar!"<sup>69</sup>

Gridley wound up in Chancery when he disputed the amount his brother was to take under his father's will. Gridley was to receive the entire estate, except for a three hundred pound bequest to his brother. Rather than pay his brother the full sum, Gridley asserted that some deduction should be made for board and lodging that his brother received.<sup>70</sup> It is not suggested that Gridley got what he deserved by driving his brother to seek redress in court over a relatively minor squabble. Instead, the reader seems to be told that the greed is all by the lawyers and the court, not by the litigants themselves.

Once the lawyers in Chancery get a hold of a case, they bleed it dry. They expand and protract the dispute, rather than resolve it. For this practice, they stand indicted. It is unclear how far the institutional indictment of lawyers in *Bleak House* extends beyond the Court of Chancery. There is a suggestion in the novel that many laws and procedures are enacted solely for the financial benefit of lawyers. For example, the reader is informed of a Parliamentary committee hearing in which a proposed change in a law is rejected even though the current law produces unjust results, unnecessary delay, and exorbitant expense.<sup>71</sup> The reason for defeat of the measure is that it would put some lawyers, like the respectable Mr. Vholes, out of business. The successful argu-

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<sup>69</sup> *Id.* at 215; see also H.M. Daleski, *Bleak House*, in CRITICAL ESSAYS ON BLEAK HOUSE, *supra* note 20, at 13, 20 (arguing that in *Bleak House* law practice "has little to do with justice and is simply a socially condoned form of parasitism").

<sup>70</sup> BLEAK HOUSE, *supra* note 1, at 214. It is noteworthy that the Jarndyce and Jarndyce case also arises from a family quarrel. See SCOTT, *supra* note 15, at 110-11 (suggesting that suitors in Chancery get what they deserve by going to court unnecessarily).

<sup>71</sup> BLEAK HOUSE, *supra* note 1, at 548-49.

ment is finally phrased: "Make man-eating unlawful, and you starve the Vholeses!"<sup>72</sup> Thus, *Bleak House* suggests that to Parliament the question of right and wrong is extraneous; rather, the question is, what effect will the proposed law have on lawyers?

This reasoning leads to a very sweeping indictment of the legal profession, that goes beyond the lawyers who practice in Chancery. Upon following this reasoning, almost every bad law is attributed to lawyers because some lawyer somewhere stands to profit from it financially.

This sweeping indictment, however, does not fully reflect the sentiments in *Bleak House*. Of all the characters in the novel, John Jarndyce comes closest to exhibiting "right" thinking on any number of issues. Thus, it is interesting that John does not generally join in the barrage of attacks on lawyers found in *Bleak House*. For example, when John's friend George Rouncewell is wrongly imprisoned for murder, John encourages him to get a lawyer. George responds that he doesn't "take kindly to the breed" and expresses his surprise that John does not share his view.<sup>73</sup> John counters with the reply: "[T]hat's equity, George."<sup>74</sup>

John's message seems to be that the institutional indictment of lawyers is reserved for lawyers who practice in the Court of Chancery. There is some ambivalence, however, since John is "a little at a loss" to challenge George's decision to decline legal assistance.<sup>75</sup> The ambivalence is heightened by George's ultimate release without the aid of counsel. Nevertheless, it is through John Jarndyce that the reader comes to doubt whether the whole breed of lawyers is to be condemned.

John Jarndyce is so wise and good that his employment of a lawyer seems a mark in lawyers' favor. His employment of a lawyer to represent him in Jarndyce and Jarndyce may be necessary and reflect nothing with respect to John's views on lawyers' usefulness. But what do we make of John's reliance on a lawyer for certain dealings with his wards, toward whom he has the most magnanimous intentions?

John employs Conversation Kenge as intermediary in his dealings with Esther Summerson's guardians, before he assumes a

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<sup>72</sup> *Id.* at 549.

<sup>73</sup> *Id.* at 705.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

more active role in her life. In addition, when John's wards are brought to London, to be sent a day later to Bleak House, greetings and arrangements are left to Kenge. During the wards' brief stay in London, an appearance before the Lord Chancellor was required to effect the move to Bleak House, and Kenge may have been necessary for that purpose. The balance of the work, however, did not require a lawyer, though John employed one.

Just as significantly, when John's ward Richard begins to consider what career to pursue, John's first suggestion is a career in the law.<sup>76</sup> After Richard abandons his first career choice, medicine, arrangements were made for Richard to apprentice in the offices of Conversation Kenge. John cautiously supported this plan and assisted in making the arrangements. When that career, too, was aborted for reasons reflecting more on Richard than on the legal profession, Richard entered military service. Law, along with medicine and the military, seems to be regarded as an honorable profession, even if some of its practitioners do not pursue it honorably. Richard apparently shares this view when he says, after leaving the military: "I only want to have been in the church, to have made the round of all of the professions."<sup>77</sup>

John appears to take the position that lawyering can be useful work, that lawyers are needed at times, and that lawyers can be useful, even when a lawyer is not required to do the job. John's criticism of the legal profession is limited to lawyers who work in the Court of Chancery. Again, the significance of John's view derives from his depiction as a wise and good man, who would be unlikely to use bad judgment concerning the care and future of his wards. That John cares for his wards through a lawyer, and that he entrusts his ward's future to a legal career, suggests a less thorough denunciation of lawyers than might be gleaned from other passages in *Bleak House*.

While the sins of the Court of Chancery are sins of lawyers,

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<sup>76</sup> *Id.* at 168. Professor Scott offers this reasonable view:

There was no intelligible reason . . . why the Bleak House menage should not have been implacably horrified at Richard's very first suggestion of going into the law—given his propensity to be attracted to the 'family curse' as Jarndyce had already named it; still less, that that same guardian should arrange his apprenticeship with solicitors who are the reverse of hostile to the Chancery proceedings as flagrant denials of justice.

SCOTT, *supra* note 15, at 67.

<sup>77</sup> BLEAK HOUSE, *supra* note 1, at 619.



this does not imply that all lawyers are sinners. Although the lawyers in *Bleak House* have little to commend them, John nevertheless encourages the belief that law can be an honorable calling, for John would wish no less for Richard.

Lawyers may share responsibility for justice gone awry in the Court of Chancery, but this also implies that lawyers should share credit for justice realized. Conversation Kenge, in helping to bring the Jarndyce family together at Bleak House, may even deserve a smidgen of the credit for that happy achievement. Lawyers, in short, share responsibility for both justice and its absence. Thus, when Dickens looks at mid-nineteenth century England and its glaring injustices, bashing lawyers seems justified.<sup>78</sup>

Lawyers have a deep connection with courts, and the performance of the courts surely does and should reflect upon lawyers. How perfect the reflection may vary, however. For example, many of our criminal courts are so overwhelmed with cases that justice is assembly-line, but to blame lawyers for this situation seems unfair. The problem, more significantly, is that there are too few courts, too few prosecutors, and too few public defenders. Lawyers would change this situation in an instant, if it were up to them, if for no other reason than to provide more employment for lawyers.

Breakdowns in the civil justice system, on the other hand, may be more attributable to lawyers. The high cost of civil litigation and the control of that process by lawyers seems hardly coincidental. Lawyers also seek out clients and cases in ways they never used to, for example through mass media advertising and more private forms of solicitation, and this contributes to additional business in the courts. In other words, certain lawyer behaviors, whether we approve of them or not, can cause distress in the judicial system.

Thus, criticism of lawyers can be difficult to separate from criticism of the law or the courts. The American legal profession has long recognized the special responsibility of lawyers "to improve not only the law but the administration of justice."<sup>79</sup> There is

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<sup>78</sup> Social injustice may continue to be a source of lawyer-bashing. Lawyers are probably not generally seen as progressive forces in the struggle for social justice, although criticism of lawyers comes from all directions.

<sup>79</sup> ABA CANONS OF PROFESSIONAL ETHICS Canon 29 (1957); see also MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 8 (1998) (A lawyer should assist in improving the legal system); MODEL RULES OF PROFESSIONAL CONDUCT Preamble

much to be proud of in the American legal system. The American litigation system, on the other hand, seems to have few admirers, especially among those who do not derive their incomes from it. We may well ponder, as a profession, how well we have discharged our shared responsibility to improve the law and the administration of justice, especially with respect to criminal and civil cases at the pre-trial and trial stages.

### B. *Lawyers as Duplicitous*

George Rouncewell, the upright former military man accused of a murder he did not commit, asserts a sweeping indictment of lawyers based on their duplicity. As noted earlier, George declined to have a lawyer represent him against the serious charge. His reasoning is instructive. He begins by considering what he would have done if he were guilty:

‘I should have got a lawyer, and he would have said (as I have often read in the newspapers), “my client says nothing, my client reserves his defence—my client this, that, and t’other.” Well, ’tis not the custom of that breed to go straight, according to my opinion, or to think that other men do. Say, I am innocent, and I get a lawyer. He would be as likely to believe me guilty as not; perhaps more. What would he do, whether or not? Act as if I was;—shut my mouth up, tell me not to commit myself, keep circumstances back, chop the evidence small, quibble, and get me off perhaps! . . .’

. . . .  
‘. . . What I say is, I must come off clear and full or not at all. Therefore, when I hear stated against me what is true, I say it’s true; and when they tell me, “whatever you say will be used,” I tell them I don’t mind that; I mean it to be used. If they can’t make me innocent out of the whole truth, they are not likely to do it out of anything less, or anything else. And if they are, it’s worth nothing to me.’<sup>80</sup>

As noted, the charges were later dismissed without a lawyer’s assistance.

George directly argues that lawyers are expendable, and his position has a certain appeal. George says that one should tell the truth, the whole truth, and nothing but the truth, and live or die by the consequences. Lawyers, he asserts, insist on doing

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(1999) (“As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession.”).

<sup>80</sup> BLEAK HOUSE, *supra* note 1, at 706-707.

otherwise; they keep circumstances back, chop the evidence small, and quibble. The observation holds true even now.

Still, all of the commendable characters in *Bleak House* seem to disagree with George's decision to forego counsel. John Jarndyce and Esther Summerson entreat George to get a lawyer, notwithstanding his argument that the truth alone should set him free. Mr. and Mrs. Bagnet, George's upright and dear friends, try to persuade him as well. Finally, George's mother, the steadfast Mrs. Rouncewell, tearfully implores George when they are finally reunited that:

[H]e must be governed by the best advice obtainable by money and influence; that he must yield up his case to the greatest lawyers than can be got; that he must act, in this serious plight, as he shall be advised to act; and must not be self-willed, however right.<sup>81</sup>

For his mother's sake, George relents, although the decision becomes irrelevant when George is released before a lawyer is retained.

It is difficult to know what to make of the George Rouncewell affair. George's reason for not employing a lawyer is never met nor contradicted, yet George's friends and loved-ones find his decision unreasonable. Mrs. Bagnet expresses their view most forcefully, telling George that it is folly to be picky about how he gets off and that, if a lawyer will help to secure his release, he should get one.<sup>82</sup>

The issue, though never directly joined, seems to be one of idealism versus practicality. George may be right that the practice of law involves some duplicity and that duplicity is generally wrong. Nevertheless, under the circumstances, the services of a lawyer may be required by the exigencies of the situation, even though those services entail some duplicity. Whether these ideal-compromising circumstances inhere in the nature of criminal prosecutions, with their high stakes, or in the nature of the legal system, we are not told. What we are told is that George's friends, all of whom we are led to admire, seem certain that a good lawyer can do good work in this context. We are left to wonder, however, whether lawyers are necessary for this purpose

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<sup>81</sup> *Id.* at 751.

<sup>82</sup> *Id.* at 708; see also SCOTT, *supra* note 15, at 101 ("The Bagnets, Esther and her guardian are all recognizing equally the inescapable inefficacy of law in such a situation and the arthritic and degenerate processes of it in their society when they appeal to him to brief counsel exactly because 'The mere truth won't do.'").

only because of a corrupt system for which they themselves are substantially responsible.

Forms of duplicity also inhere in the contemporary American lawyer ethos. This is most clearly illustrated by the ethical precepts that a lawyer's representation of a client "does not constitute an endorsement of the client's political, economic, social or moral views or activities"<sup>83</sup> and that the lawyer should act with commitment and dedication to the interests of the client,<sup>84</sup> whose interests are largely defined by the client herself.<sup>85</sup> Under this regime, a form of duplicity arises in that the lawyer must advance the client's self-defined interests even though the lawyer may personally oppose the advancement of those interests.

The tension in the lawyer's role created by this form of duplicity has been nicely captured by Robert Post who compared the roles of lawyer and actor:

Actors, however, lie directly: we all know that Olivier is only pretending to be King Lear, and that it is just a performance. But consider, in this light, the trial lawyer making a summary to the jury. In that case we know both (1) that the lawyer must be representing the interests of his client, so that his speech does not sincerely represent his "personal" views; and (2) that if the lawyer distinguishes between his personal views and those of his client, his client will suffer, so that the lawyer can perform his job only if he "appears" to be and in fact convinces us that he is sincere. Unlike the actor, then, the lawyer's job requires that he totally conceal his performance. . . . This is extraordinarily disturbing. And so in popular culture we say of the lawyer, as the old adage goes, "A good lawyer must be a great liar."<sup>86</sup>

As disturbing as this form of duplicity may be, it may also be endemic to the lawyer's role. To speak for a client must be different than to speak for oneself. Moreover, when Tulkinghorn speaks for himself to Lady Dedlock, without Sir Leicester's

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<sup>83</sup> MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(b) (1999).

<sup>84</sup> *Id.* Rule 1.3.

<sup>85</sup> *Id.* Rule 1.2(a).

<sup>86</sup> Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CAL. L. REV. 379, 388 (1987) (footnote omitted); see also Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469, 1471 (1966) ("Effective trial advocacy requires that the attorney's every word, action, and attitude be consistent with the conclusion that his client is innocent." This duty is asserted to apply irrespective of the client's actual innocence.); see *infra* note 94.

knowledge or consent, he is rightly criticized for the presumption that he shows.

The criticism of lawyers' duplicity as endemic to the lawyer's role both justifies the criticism and undermines it. That is, there is a firm basis for the charge of duplicity, but it is a charge for which lawyers are not wholly at fault. Of course, all duplicity by lawyers is not justified simply because some duplicity is required. Moreover, the duplicity that is required may form a slippery slope leading down to duplicity that cannot be justified.

As Tulkinghorn amply demonstrates, the duplicity of lawyers consists not only in what they say but also in what they hide. Confidentiality works as both a sword and a shield in *Bleak House*, and it usually benefits any lawyer who invokes it. Dickens does not miss the irony when lawyers claim that confidentiality is required for candor. In *Bleak House*, confidentiality and conspiracy are more inextricably related.

It is not always wrong to keep secrets. Lady Dedlock finally shares her secret with her daughter Esther Summerson, mostly it seems, because Lady Dedlock feels that she owes Esther an explanation and an apology. Esther keeps the secret, although Lady Dedlock tells her she is not bound to do so, until Sir Leicester pays a largely inconsequential visit to Bleak House. Only then does Esther tell the secret to John Jarndyce in the hope that John can help prevent a situation in which Esther will inadvertently reveal the secret to others. John, in turn, resolves to keep the secret out of concern for Lady Dedlock and fear of Tulkinghorn.<sup>87</sup> What separates Esther and John from Tulkinghorn is their appreciation of whose secret it is that they share. Esther expresses her view:

If the secret I had to keep had been mine, I must have confided it to Ada before we had been long together. But it was not mine; and I did not feel that I had a right to tell it, even to my guardian, unless some great emergency arose.<sup>88</sup>

Compare Tulkinghorn's view in his second confrontation with Lady Dedlock:

'If, sir,' she begins, 'in my knowledge of my secret—' But he interrupts her.

'Now, Lady Dedlock, this is a matter of business, and in a matter of business the ground cannot be kept too clear. It is

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<sup>87</sup> *BLEAK HOUSE*, *supra* note 1, at 607.

<sup>88</sup> *Id.* at 518.

no longer your secret. Excuse me. That is just the mistake. It is my secret, in trust for Sir Leicester and the family. If it were your secret, Lady Dedlock, we would not be here, holding this conversation.<sup>89</sup>

Esther and John preserve Lady Dedlock's secret; Tulkinghorn confiscates it. To Esther and John, it is a trust that entails responsibility. To Tulkinghorn, it is property that confers power. For lawyers, secrets can be responsibilities or weapons. It is their latter note that is condemned in *Bleak House*.

The duplicity occasioned by keeping secrets may, then, be justified if the secrets are altruistically kept. *Bleak House* condemns self-advancement through use of others' secrets. Contemporary American ethics rules largely agree on this point. The disagreement is in this particular: lawyers may use client secrets to their own advantage if they do not disadvantage the client in doing so.<sup>90</sup> This suggests a certain shared ownership in client secrets, with the client as the superior rights holder and the lawyer as a secondary rights holder. Again, the American lawyer ethos falls a bit short of the standards advanced in *Bleak House*.

### CONCLUSION

The lawyers in *Bleak House* are cold and calculating. Vholes speaks for his colleagues when he tells his client, "your interests demand that I should be cool and methodical, Mr. Carstone; and I cannot be otherwise—no, sir, not even to please you."<sup>91</sup> Similarly, Tulkinghorn is "too passionless to be either [enemy or friend],"<sup>92</sup> "mechanically faithful without attachment,"<sup>93</sup> and "indifferent to everything but his calling."<sup>94</sup> Without passion, the reader seems to be told, there can be no empathy or compassion, and no humanity. The lawyers of *Bleak House* have barely an ounce of humanity among them, and most of that is reserved for Guppy, who is not a full-fledged lawyer until the novel's end.

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<sup>89</sup> *Id.* at 659.

<sup>90</sup> MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.8(b). *But see* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 4-101(B)(3) (1992); RESTATEMENT (SECOND) OF AGENCY § 395 (1958).

<sup>91</sup> *BLEAK HOUSE*, *supra* note 1, at 551.

<sup>92</sup> *Id.* at 511.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*; *see also* Fradin, *supra* note 20, at 54 ("Tulkinghorn is the man who most exactly understands the conditions of successful public or institutional life and who has made the most perfect adaptation to them, an adaptation which has dried up all human warmth, spontaneity, and feeling.").

The cool analysis that is the lawyer's stock-in-trade becomes, in *Bleak House*, a basis for Dickens' devastating attack on the profession. That a professional virtue is regarded as a personal vice must give us pause. As lawyers, our defense must be that the capacity for cool analysis does not destroy the capacity for empathy and compassion, and in some lawyers this is no doubt true while in others perhaps false. Dickens describes a professional risk as if it were generally realized as fact.

The same may be said for lawyers' opportunity to betray their clients, as Tulkinghorn betrays Sir Leicester. Again, the risk is universal among lawyers, but the incidence of betrayal is not universal. Dickens apparently agrees, for no suggestion is made that Conversation Kenge betrays John Jarndyce.

The threats of lawyer malfeasance through, first, lack of empathy and compassion and, second, opportunity for betrayal, inhere in the job of lawyering. The same may be said for the threat of avarice, as illustrated by Vholes. It is, however, the *threat* that inheres in each case; malfeasance of these sorts is not, itself, inherent in the job.

The two counts that form the general indictment of lawyers in *Bleak House* are of a different order, however. The first count: lawyers are substantially responsible for and profit from a justice system that does not deliver justice and, in fact, delivers injustice through its muck-like process. The second count: lawyers care too little about truth. These charges go more deeply to the core of lawyering.

It is striking how little these general indictments have changed from mid-nineteenth century England to late-twentieth century United States. It is striking, too, that these general indictments of lawyers concern two matters that lawyers hold most dear: their ability to resolve disputes through fair process and their commitment to speak the truth.

Lawyers and non-lawyers sometimes seem worlds apart on what is fair and what is truth. Lawyers may be fair to a fault in the procedures they devise and implement for resolving disputes. Their good faith, however, in employing such ultra-fair process may be in doubt when the process is so expensive and the lawyers' profits from it so great.

So, too, the lawyer's truth often seems to be the non-lie, carefully construed, while the non-lawyer likely looks at truth in a far less pinched way. The posturing of lawyers engaged in advocacy,

an example of their break with truth, receives special sarcastic attention in *Bleak House*.<sup>95</sup> The lawyers in *Bleak House*, like the lawyers of our time, are seen as insincere. What they pretend to demand of others, lawyers do not demand of themselves: to tell the truth, the whole truth, and nothing but the truth.

In *Bleak House*, Dickens posits these crucial disagreements concerning truth and fairness and finds the lawyers' views on these matters lacking. We cannot as lawyers explain away the disagreement; it is real and substantial. As long as lawyers and the public have such different notions of fairness and truth, the stature of the legal profession must suffer.

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<sup>95</sup> BLEAK HOUSE, *supra* note 1, at 258-59. Lawyers on summer vacation are described in these terms:

The learned gentleman who is always so tremendously indignant at the unprecedented outrage committed on the feelings of his client by the opposing party, that he never seems likely to recover it, is doing infinitely better than might be expected, in Switzerland. The learned gentleman who does the withering business, and who blights all opponents with his gloomy sarcasm, is as merry as a grig at a French watering-place. The learned gentleman who weeps by the pint on the smallest provocation, has not shed a tear these six weeks.

*Id.*



